



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 8867914

Date: AUG. 26, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding his claim of eligibility under Dhanasar's first prong, the Petitioner indicated that he seeks to continue his work "in the United States as an Entrepreneur, specifically focusing on economic development in the Retail sector." He asserted that his proposed endeavor involves "the automobile sales sector of the Retail field . . . initially in the Central Florida region" and that his "auto shop units will provide consumers with the ability to purchase new and used cars at competitive prices." The Petitioner further stated:

Since April of 2018, I have owned [REDACTED] a car dealership and automotive repair shop in [REDACTED] Florida, USA. I maintain and oversee the day to day operations at this facility. We currently employ 6 workers, with plans to expand the business to future branches. The number of employees should reach 20 upon completion, creating much needed jobs in the region.

In addition, the Petitioner claimed that he plans "to open at least three new auto shop units in Florida. Since the headquarters is located centrally, in [REDACTED] the goal is to open a new unit in the north [REDACTED] and two in the south [REDACTED]." He also noted that "[t]he initial investment to establish my business comes from a \$150,000 financial contribution, and I expect a return on investment of approximately 50%." The Petitioner also contended that his undertaking offers "greater economic success for the nation," "create[s] jobs in the region," and "promote[s] a higher quality level of services for the end consumer."

The Petitioner presented the February 2018 "Articles of Organization" for [REDACTED] and a May 2018 amendment to those articles adding him as an "Authorized Member." He also submitted [REDACTED]'s December 2018 balance sheet listing "total assets" of \$109,957, the company's license as "an independent dealer in motor vehicles" in Florida, and its monthly tax payment confirmations from the Florida Department of Revenue for 2018 and 2019. Additionally, the Petitioner

³ See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

provided [REDACTED]'s 2018 federal tax return.⁴ Furthermore, with the appeal, he offers copies of agreements he entered into in 2019 to sell 18 vehicles purchased by his investor partners.⁵

The record includes information about management consulting in the United States, foreign-born entrepreneurs' contribution to economic activity, immigrant entrepreneurs as a path to U.S. economic growth, and the value of entrepreneurs to the global economy. In addition, the Petitioner provided articles discussing the entrepreneurial legacy of immigrants and their children, the value of entrepreneurs to the U.S. economy, the economic and fiscal consequences of immigration, immigrant entrepreneurs as a path to U.S. economic growth, and the positive effects of immigration. He also submitted information about immigrant entrepreneurs' positive impact on the U.S. economy, the rise in immigrant founded businesses, immigrants as drivers of innovation and economic growth, and financial inclusion as a way to foster economic development. The record therefore supports the Director's determination that the Petitioner's proposed work as an automotive business entrepreneur has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner argues on appeal that he is "directing major commercial and economic activities within the nation, particularly by developing business activities, promoting commercial transactions, and creating jobs in the U.S." He states that his proposed endeavor stands to "benefit the U.S. economy, generating more revenue, and contributing to the generation of jobs in the country." The Petitioner further maintains that his undertaking "will have broader implications in the field, and will produce substantial economic benefits, due to the ripple effects of his professional activities." In addition, he asserts his proposed work "will contribute to tax revenue, prioritize the domestic job market, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to U.S. gross domestic product (GDP)." Furthermore, the Petitioner contends that his proposed endeavor stands to affect the national economy by "[o]ffering economic convenience and agility" and "prioritizing the domestic job market – as he employs U.S. workers within his U.S. company."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to operate and expand his automotive business, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company, business partners, and customers

⁴ This tax return lists "gross receipts or sales" of \$183,428 and "ordinary business income" of \$28,525.

⁵ The vehicle values in these agreements ranged from \$2,040 to \$11,600.

to impact or the U.S. economy or automotive sales industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company's future staffing levels, business activity, and related tax revenue stand to provide substantial economic benefits in Florida or the United States. Moreover, although the Petitioner asserts that his company will hire additional U.S. employees, he has not offered sufficient evidence that the areas where [REDACTED] operates and plans to expand are economically depressed, that he would employ a significant population of workers in those areas, or that his endeavor would offer the regions or their population a substantial economic benefit through employment levels or commercial activity. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's business endeavor would reach the level of "substantial positive economic effects" contemplated by Dhanasar. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.